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Attorney for Debtor-in-possession Daniel Edstrom

IN THE UNITED STATES BANKRUPTCY COURT  
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

In re:	)	Case No.: 2012-29353-B-7
	)	DC No.: JHH-70
DANIEL MAJOR EDSTROM,	)	
	)	Date: February 3, 2015
Debtor-in-Possession	)	Time: 9:30 a.m.
	)	Courtroom No: 32
	)	Judge: Hon. Christopher Jaime
	)	
	)	United States Courthouse
	)	501 I Street, 6 <sup>th</sup> Floor
	)	Sacramento, CA 95814
	)	

DEBTOR'S REPLY TO CREDITOR U.S. BANK, NATIONAL ASSOCIATION, AS  
TRUSTEE FOR RASC 2005-EMX4 RESPONSE TO DEBTOR'S OBJECTION TO  
PROOF OF CLAIM 6-1

Debtor DANIEL MAJOR EDSTROM (the “Debtor”) hereby submits this reply brief in support of his objecting to claim No. 6-1, of U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR RASC 2005-EMX4 (“2005-EMX4”), filed with the Court September 25, 2012, as follows:

2005-EMX4’s Response makes factual allegations that 2005-EMX4 is a secured creditor (see Response: introductory opening ¶ and ¶ 2). These statements are made without any supporting evidence at all, which is in violation of Local Rule 9014-1(f)(1)(B). Specifically, Paragraph 2 of the Response makes the specific factual allegation “U.S. Bank’s Proof of Claim reflects that U.S. Bank is the holder of a first priority lien encumbering Debtor’s residence

1 located at 2690 Brown Bear Court, Cook1, CA 95614 (“Residence”).” This statement is made  
2 without any supporting evidence at all, again in violation of Local Rule 9014-1(f)(1)(B). A  
3 review of Claim 6-1 shows that this statement is entirely false and without foundation. The Deed  
4 of Trust names Mortgage Lenders Network USA, Inc. (“MLN”) as the lender while the  
5 beneficiary is listed as some uncertain derivative of Mortgage Electronic Registration Systems,  
6 Inc. (“MERS”) and/or MLN. 2005-EMX4 is not found on the face of this document nor is there  
7 an assignment attached to Claim 6-1. Finally, the note attached to Claim 6-1 does not name  
8 2005-EMX4 as the payee nor are there any endorsements to 2005-EMX4. This deficiency was  
9 fully laid out already in Debtors objection to Claim 6-1 and 2005-EMX4 has remained silent on  
10 this and all other material facts put at issue by Debtors objection.

11 Further, and as Creditor's own admission that their proof of claim 6-1 is in fact entirely  
12 illegitimate, 2005-EMX4 alleges that it has withdrawn Claim 6-1 on January 20, 2015. See  
13 Response: ¶ 9. However, this purported withdrawal is entirely unlawful under the Bankruptcy  
14 Code and so entirely ineffective.

15 A creditor may withdraw a claim as of right by filing a notice of withdrawal, except  
16 as provided in this rule. If after a creditor has filed a proof of claim an objection is  
17 filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the  
18 creditor has accepted or rejected the plan or otherwise has participated significantly in the  
19 case, the creditor may not withdraw the claim except on order of the court after a hearing  
20 on notice to the trustee or debtor in possession, and any creditors’ committee elected  
21 pursuant to §705(a) or appointed pursuant to §1102 of the Code. Federal Rules of  
22 Bankruptcy Procedure, Rule 3006 [emphasis added].

23 2005-EMX4 seems to be claiming a secured lien with a “first priority lien encumbering  
24 Debtor’s residence” that is somehow evidenced by Claim 6-1, and somehow, by magic, that if  
25 they withdraw their filed claim paperwork, Debtors objections are moot. See Response, ¶ 9. This  
26 is absurd. By attempting to withdraw Claim 6-1, even though entirely unlawful and ineffective  
27 as an actual withdrawal, 2005-EMX4 has very effectively admitted Debtor owes it no money and  
28 thus it holds no valid claim.

29 Federal Rule of Bankruptcy Procedure 3006, which is governed by the same  
30 considerations underlying Federal Rule of Civil Procedure 41(a)(2), provides that voluntary  
31 dismissals should be granted only upon an order of the bankruptcy court which "shall contain

1 such terms and conditions as the court deems proper." Fed.R.Bankr.P. 3006; see id., Advisory  
2 Committee Note (1984). See *In re Lowenschuss*, 67 F. 3d 1394 (1995 9<sup>th</sup> Cir.). 2005-EMX4 has  
3 participated significantly in Debtors bankruptcy case. Multiple notices of appearance with  
4 demands for notice of all pleadings and filings have been filed see Docket Item No. ("DKT") #'s  
5 50 and 144, Proof of Claim 6-1 was filed on September 25, 2012 (allegedly over-riding Debtor's  
6 scheduling of this claim), Debtor filed a Motion to Value collateral (see DKT 116) based on the  
7 filing of Claim 6-1 in which the Court granted in part Debtors motion (see DKT's 134 and 135),  
8 2005-EMX4 objected to Debtors First Amended Disclosure Statement (see DKT 191), and  
9 finally Debtor objected to Claim 6-1 (see DKT 265). The actions of 2005-EMX4 in this case has  
10 caused Debtor and the estate significant time and expense.

11 Debtor interprets the attempted withdrawal of 2005-EMX4's claim as it obviously is – an  
12 admission that Debtor's objections are valid, that 2005-EMX4's claim is unenforceable against  
13 Debtor, Debtor's property and property of the estate and that 2005-EMX4 waives any lien it has  
14 previously claimed (real or fictitious).

15 Although Debtor has objected to Claim 6-1, the burden of proof is on 2005-EMX4 to  
16 prove both the form and substance of their claim. Because Claim 6-1 does not meet the  
17 requirements of F.R.B.P. Rule 3001(f), their Proof of Claim 6-1 is hearsay, without foundation,  
18 and simply lacking in any evidence whatsoever, as is each material factual allegation that 2005-  
19 EMX4 is a "secured creditor". In fact Proof of Claim 6-1 and the underlying factual allegations  
20 are pure speculation, given without any reasonable basis. To be specific, Debtor's objection  
21 stated unequivocally: "Claim 6-1 is devoid of any evidence that 2005-EMX4 is a creditor,  
22 indenture trustee, equity security holder, agent, attorney in fact, guarantor, surety, endorser, Note  
23 Holder, holder in due course, holder, non-holder in possession, or otherwise has any interest in  
24 any obligation of Debtor or the bankruptcy estate." Debtor's objection presciently states:  
25 "PROOF OF CLAIM 6-1 SHOULD BE DISALLOWED BECAUSE 2005-EMX4 IS NOT A  
26 CREDITOR OF DEBTOR OR DEBTOR'S BANKRUPTCY ESTATE; CLAIMANT HAS NOT  
27 PROVIDED, AND CANNOT PROVIDE, ANY EVIDENCE THAT 2005-EMX4 OWNS THE  
28 NOTE AND/OR OWNS RIGHTS TO PAYMENTS ON THE ALLEGED DEBT."

1           2005-EMX4 now admits that their unproven claims are unenforceable against Debtor,  
2 Debtors property and property of the estate, in that they have clearly abandoned their claim by  
3 way of purporting to withdraw it in its entirety, and in doing so have by its own actions  
4 abandoned and waived responses to all of Debtors objections.

5           2005-EMX4 and their agents and attorneys have not shown a pecuniary interest in any  
6 underlying debt that gives rise to any claim and thus 2005-EMX4 is not a creditor. For this  
7 reason, as set out in detail in Debtor's original objection, as well as the fact 2005-EMX4 by way  
8 of its response has admitted it holds no valid claim, Proof of Claim No. 6-1 should be disallowed  
9 in full and the Court should determine that 2005-EMX4's claims against Debtor, Debtors  
10 property and property of the estate are unenforceable and that no lien can exist for an  
11 unenforceable claim. In addition, the Court should take note of Debtors objection which  
12 explains how various creditor names have been used from recorded documents or just pulled out  
13 of the air against Debtor in various different Court proceedings. These names all involve  
14 variations of U.S. Bank, NA as Trustee. This appears to be a standard and practice of US Bank,  
15 NA. [see analysis and explanation of this very conduct by the Honorable W. Richard Lee in *In*  
16 *re Deamicis*, 454 B.R. 756 (Bankr. E.D. Cal. 2011)].

17           2005-EMX4 never established Prudential Standing, is not an indispensable party and is  
18 not even a party in interest. 2005-EMX4 never established Constitutional Article III standing and  
19 has no pecuniary interest in any obligation of Debtor, Debtors property or property of the estate.  
20 2005-EMX4 never established joinder with a party that had Prudential and Constitutional Article  
21 III standing. See *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240 (1933).

22           2005-EMX4 has entirely failed to submit to the Court any evidence whatsoever in  
23 support of any purported validity to Claim 6-1, and moreover, the its action of its  
24 attempted/purported withdrawal of Claim 6-1, it has tacitly admitted Claim 6-1 is entirely  
25 invalid. While this is a tacit admission, it is a complete, clear, compelling, and absolute  
26 admission that Claim 6-1 has no basis at all and is entirely invalid.

27           **WHEREFORE**, Debtor prays for relief as follows:

28    //

1           1.       That Claim No. 6-1 of U.S. BANK, NATIONAL ASSOCIATION, AS TRUSTEE  
2 FOR RASC 2005-EMX4 be disallowed in its entirety; and

3           2.       That Debtors receive such other and further relief as the Court may deem just.

4 RESPECTFULLY SUBMITTED:

5 **LAW OFFICE OF JUDSON H. HENRY**

6 Dated: January 27, 2015

7 By:           /s/ Judson H. Henry            
8       Judson H. Henry, Attorney for Debtor Daniel Edstrom